

Attorney Docket No.: DEX-0287  
Inventors: Salceda et al.  
Serial No.: 09/989,890  
Filing Date: November 21, 2001  
Page 2

#### REMARKS

Claims 1-17 are pending in the instant application. Claims 1-17 have been subjected to a Restriction Requirement as follows:

Group I, claims 1-5 and 7-8, drawn to a nucleic acid, cell, vector, classified in class 536, subclass 23.1 as well as class 435, subclasses 325 and 320.1;

Group II, claims 6, 13 and 15, drawn to methods and kits for determining the presence of a breast specific nucleic acid or polypeptide, classified in class 435, subclasses 6 and 7.1 as well as class 422, subclass 61;

Group III, claim 9, drawn to a method for producing a polypeptide, classified in class 435, subclass 69.1;

Group IV, claims 10-11, drawn to a polypeptide, classified in class 530, subclass 350;

Group V, claim 12, drawn to an antibody, classified in class 530, subclass 387.1;

Group VI, claim 14, drawn to a method for diagnosing and monitoring the presence and metastases of breast cancer in a patient, classified in class 436, subclass 64;

Group VII, claim 16, drawn to a method of treating a patient with breast cancer, classified in class 514, subclass 2; and

Group VIII, claim 17, drawn to a vaccine, classified in

Attorney Docket No.: DEX-0287  
Inventors: Salceda et al.  
Serial No.: 09/989,890  
Filing Date: November 21, 2001  
Page 3

class 514, subclass 2.

The Examiner suggests that the Groups are distinct, each from the other as being independent inventions directed to different chemical or entity types regarding the critical limitations.

In addition, the Examiner suggests that each Group detailed above reads on a patentably distinct sequence and has requested Applicants to elect a single amino acid/polypeptide sequence or a single nucleic acid sequence.

Finally with respect to Groups II, VI and VIII, the Examiner suggests that a species election between nucleic acid and protein must be made.

Applicants respectfully traverse this restriction requirement.

MPEP §803 provides two criteria which must be met for a restriction requirement to be proper. The first is that the inventions be independent or distinct. The second is that there would be a serious burden on the Examiner if the restriction is not required. A search of prior art relating to an elected nucleic acid, polypeptide or antibody would also reveal any references teaching uses for the nucleic acid, polypeptide or antibody. Accordingly, Applicants believe that searching of all

Attorney Docket No.: DEX-0287  
Inventors: Salceda et al.  
Serial No.: 09/989,890  
Filing Date: November 21, 2001  
Page 4

the claims, at least when limited to elected nucleic acids or polypeptides, is overlapping and would not place an undue burden on the Examiner if the Restriction is not made.

In particular, Applicants believe that inclusion of Group III with Group I would not be burdensome since both Groups are classified in class 435.

Thus, since this Restriction Requirement does not meet both criteria as set forth in MPEP § 803 to be proper, reconsideration and withdrawal of this Restriction Requirement is respectfully requested.

In addition, with respect to the election of a single sequence, MPEP § 803.04 clearly states that a reasonable number of nucleotide sequences, normally ten sequences, can be claimed in a single application. Applicants respectfully disagree with the Examiner that searching of merely ten sequences is undue. Accordingly, withdrawal of this sequence election requirement and reconsideration to include a more reasonable number of at least 10 sequences in accordance with MPEP § 803.04 is also respectfully requested.

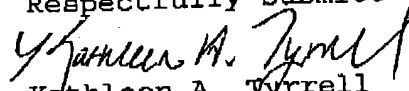
However, in an earnest effort to be completely responsive, Applicants elect to prosecute Group I, claims 1-5 and 7-8, with traverse. Applicants further elect to prosecute SEQ ID NO:105

Attorney Docket No.: DEX-0287  
Inventors: Salceda et al.  
Serial No.: 09/989,890  
Filing Date: November 21, 2001  
Page 5

encoding SEQ ID NO:238, with traverse.

Applicants believe that the foregoing comprises a full and complete response to the Office Action of record.

Respectfully submitted,

  
Kathleen A. Tyrrell  
Reg. No. 38,350

Date: September 27, 2004

LICATA & TYRRELL P.C.  
66 E. Main Street  
Marlton, New Jersey 08053  
(856) 810-1515